

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5825 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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HEIRS OF SULEMN ABDULA

Versus

STATE OF GUJARAT

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Appearance:

MR CH VORA for Petitioners

MR. T.H.SOMPURA,LD.GOV.T.PLEADER for Respondent No. 1

MR SURESH M SHAH for Respondent No. 2

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 15/01/97

ORAL JUDGEMENT

Rule. Ld. Govt. Counsel Mr. T.H. Sompura and Ld.  
Counsel Mr. S.M. Shah for the Respondents waive service  
of the rule.

The present petition has been directed against the orders pronounced by the Ld. Member, Gujarat Revenue Tribunal in Appeal No. TEn.A.K.6/94 under the orders dated 6th May, 1996. The Tribunal was of the opinion that the appeal was barred by Law of Limitation and that "Satisfactory and cogent reasons" were not furnished by the petitioners, who were present before the Tribunal in the capacity of the appellants.

Learned counsel Mr. Vora for the petitioners urges that, in view of the special facts annexed to the case, the delay of thirty days was required to be condoned and that the appeal was required to be heard on merits. There is a considerable force in the contention coming from learned counsel Mr. Vora. It shall have to be appreciated that the petitioners under a misconception of law approached the State Government by taking out the necessary proceedings. Petitioners learnt by then that, the proceedings before the State Government were not maintainable and that appropriate remedy would be to approach the Gujarat Revenue Tribunal. This was of course done and a Revision Application came to be filed before the Tribunal. The Tribunal was of the view that, the Revision Application was not maintainable, but in fact the appeal could have been maintainable. The Tribunal in the orders impugned have said that, there has been a delay of "nearly one month" and that there are no "Satisfactory and cogent reasons" furnished by the appellants. This does not appear to be in consonance with the facts on record and the legal position. At all the relevant times the petitioners were vigilant to agitate their case before a competent forum. Unfortunately, under a misconception they had approached the State Government but later on they had diverted towards the Gujarat Revenue Tribunal. There was also a further misconception regarding the Law of Limitation. Their advice was that, they could do so within a period of one year which would be a reasonable time frame. Any how, the finding of fact recorded by the Tribunal is that, there has been a delay of "nearly one month".

This delay cannot be said to be a delay which would lead me to believe that the petitioners had preferred to abandon their case. No negligence, lack of bona fides or laches could be attributed to the petitioners, from which I would be able to deduce the state of mind on the part of the petitioners that, they were not vigilant enough to have their case agitated before a competent forum. On the contrary, the different rounds would go to show that the petitioners wanted to

have their case agitated by a forum which was competent enough to redress their grievance. Therefore applying this test, it appears that the time of one month recorded by the Tribunal would not be such a delay which could not have been condoned under Section 5 of the Limitation Act, 1963. The word "Sufficient Cause" used in the above said provision of law have been interpreted in a wide perspective, and it has been accepted that a matter which requires a judicial adjudication should not be thrown out of the corridors of the Court merely on a technical contention that there has been some delay. Whenever and wherever the delay is caused, there is always some negligence on the part of the petitioner. But the present case does not reflect such a negligence which would disentitle the petitioners to claim the benefit available to them under Section 5 of the Limitation Act, 1963.

A reference is required to be made to the provisions contained in Section 14 of the Limitation Act 1963, which provides for the exclusion of time of proceeding bona fide in a Court without jurisdiction. The facts adverted to by me above would go to show that the petitioners had preferred to resort to the forum which ultimately was found not to be having the requisite jurisdiction. Therefore for same period the provisions contained under Section 14 of the Limitation Act, 1963, would also come to the assistance of the petitioners.

Learned counsel Mr. S.M.Shah who appears on behalf of the Respondent no.2 places reliance upon the Supreme Court pronouncement in Lala Mukand (Dead) by L.Rs. Appellants vs. Lajwanti and others, Respondents, Air 1975, S.C. pg. 1089. Pointed attention of mine has been drawn towards paragraph 10 of the said pronouncement. The tale telling circumstances have been narrated by the Apex Court, while coming to the conclusion that the appellant had not only not taken up the plea that the appeal was due to wrong advice of the counsel but that the case put forth by them was also absolutely a different one. Looking to these facts & circumstances of the case it was the decision of the Apex Court that the High Court was not justified in their conclusion. Indeed the principle has been laid down that when the first Appellate Court was finding absence of sufficient cause and had preferred not to condone the delay in the filing of the appeal, the exercise of the discretion cannot be said to be perverse or illegal and that, therefore the non interference by the High Court in the Second Appeal was held to be a justifiable exercise. This say of the Supreme Court comes in the background of

the facts & circumstances of the case narrated at paragraph-10 of the decision.

As indicated by me above, the facts & circumstances of the case on hand are entirely different. In my opinion the delay of 30 days was required to be condoned by the Gujarat Revenue Tribunal and that the case was required to be examined, according to law and on merits. Present petition therefore requires to be allowed and the same is hereby accordingly allowed. The orders under challenge are hereby set aside and the matter is remanded to the Tribunal, with a request to decide the same according to law and on merits, treating the same to be within the time frame, as in my opinion the delay of 30 days requires to be condoned. Rule is made absolute accordingly.

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